**Local 394, Laborers' International Union of North America, AFL-CIO *and* Wakil Abdunafi, and Building Contractors Association of New Jersey, Party to the Contract.** Case 22-CB-4763

4 April 1984

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 17 October 1983 Administrative Law Judge Thomas T. Trunkes issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent's rule excluding nonbookmen from the hiring hall after registering for referrals did not violate Section 8(b)(1)(A) of the Act. We disagree with this conclusion for the following reasons.

The Respondent and Building Contractors Association of New Jersey (an association of employers) are parties to a collective-bargaining agreement. Pursuant to the collective-bargaining agreement, the Respondent operates an exclusive hiring hall from the second floor of a union-owned building. Prior to March 1982[1] applicants for referrals (whether bookmen or nonbookmen[2]) entered the hiring hall, filled out the necessary referral documents, and remained inside the hiring hall to await referrals.

On 5 March, at a monthly business meeting, a union member moved that nonbookmen not be allowed to remain inside the hiring hall after registering for referrals. The membership passed the motion without opposition. On 8 March the Respondent implemented the new rule, insisting that nonbookmen, after registering, wait outside the building for referrals. When a nonbookman was to be referred, a union officer called that person's name from the second floor window.

Section 8(b)(1)(A) makes it an unfair labor practice for a union "to restrain or coerce" employees in the exercise of the rights guaranteed them by Section 7. Section 7 gives employees the right (qualified by circumstances not present in this case) to join a union or to refrain from joining a union. Thus, because Section 8(b)(1)(A) protects the exercise of Section 7 rights, union conduct that coerces an employee into joining a union violates Section 8(b)(1)(A). See *Painters Local 277 v. NLRB*, 717 F.2d 805 (3d Cir. 1983), enfg. in part and denying in part *Polis Wallcovering Co.*, 262 NLRB 1336 (1982).

The judge found that the rule excluding nonbookmen from the hiring hall after registering for referrals "encourages nonmembers to join the Union and encourages members who are delinquent in their payment of dues to remedy that condition."[3] We agree. But, we find further that the rule excluding nonbookmen from the hiring hall after they register for referrals "encourages" because it tends to coerce nonbookmen into joining the Union.[4] Accordingly, we conclude that the Respondent violated Section 8(b)(1)(A) by implementing the rule excluding nonbookmen from the hiring hall after they register for referrals.[5]

### AMENDED CONCLUSIONS OF LAW

1. Substitute the following for the judge's Conclusion of Law 3.

"3. Respondent, by excluding nonbookmen from its hiring hall after they register for referrals, has restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act."

2. Add the following as Conclusion of Law 4.

"4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act."

### The Remedy

Having found that the Respondent violated Section 8(b)(1)(A) of the Act, we shall order it to

[1] All subsequent dates refer to 1982 unless otherwise indicated.

[2] Bookmen are those union members who pay dues on a regular basis. Nonbookmen includes nonmembers and union members who are more than 3 months' delinquent in dues payments.

[3] The judge rejected the Respondent's claim that the rule was necessary to control misbehavior of nonbookmen.

[4] The union membership believed the rule might have such a result. According to the judge, the union membership, frustrated because they could not obtain as much employment as they desired, hoped by passing the rule "to avoid sharing work with non[bookmen] whom [the membership] considered 'freeloaders.'"

[5] The judge found no violation of Sec. 8(b)(1)(A) because there was no evidence that the Union's action had the effect of discriminating against nonbookmen in regard to hire, tenure of employment, or terms or condition of employment. We note that coercion, not discrimination, is the touchstone of Sec. 8(b)(1)(A), and that the test of coercion is not whether a union's action proves effective, but whether the action tends to coerce. See, e.g., *Painters Local 277*, supra; *Steelworkers Local 5550 (Redfield Co.)*, 223 NLRB 854 (1976).

cease and desist and to take affirmative action designed to effectuate the policies of the Act.

## ORDER

The National Labor Relations Board orders that the Respondent, Local 394, Laborers' International Union of North America, AFL-CIO, Elizabeth, New Jersey, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Restraining and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act by excluding nonbookmen from its hiring hall after they register for referrals.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

(a) Rescind the rule excluding nonbookmen from its hiring hall after they register for referrals.

(b) Post at its offices, meeting halls, and hiring halls copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Furnish to the Regional Director sufficient signed copies of the attached notice for posting at the premises and projects of the employers of Building Contractors Association of New Jersey, if they are willing.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO MEMBERS
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain or coerce any of you by excluding nonbookmen from our hiring hall after they register for referrals.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the rule excluding nonbookmen from our hiring hall after they register for referrals.

LOCAL 394, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

## DECISION

### STATEMENT OF THE CASE

THOMAS T. TRUNKES, Administrative Law Judge. The above-captioned case was heard in Newark, New Jersey, on February 28 and June 16, 1983, based on a charge filed by Wakil Abdunafi, herein Abdunafi or the Charging Party, on August 23, 1982,[1] and a complaint issued therein on October 7, alleging that Local 394, Laborers' International Union of North America, AFL-CIO, herein Respondent or the Union, violated Section 8(b)(1)(A) of the National Labor Relations Act, herein the Act, by refusing to allow nonmember job referral applicants, herein nonmembers, to enter and remain in Respondent's hiring hall while awaiting job referrals. Respondent filed an answer, denying the commission of any unfair labor practices. Building Contractors Association of New Jersey, Party to the Contract, herein BCA, was not represented at the hearing. However, the General Counsel, Respondent, and the Charging Party participated in this proceeding and had full opportunity to adduce evidence, to examine and cross-examine witnesses, argue orally, and to file briefs. Oral arguments were presented at the close of the case by counsel for the General Counsel, herein the General Counsel, counsel for Respondent, and the Charging Party. In addition, both General Counsel and Respondent submitted timely briefs.

The sole issue presented is the following:

Whether Respondent, by refusing to allow nonmembers awaiting job referrals to enter and remain in its hiring hall, while permitting members of Respondent to thus remain inside the hiring hall, restrained and coerced nonmembers in the exercise of the rights guaranteed to

[1] All dates hereinafter will refer to 1982, unless otherwise specified.

them in Section 7 of the Act, thus engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act?

On the entire record in this case, including my evaluation of the witnesses, based on the evidence received and my observation of their demeanor, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

BCA, a New Jersey corporation, an association of employers whose members are engaged in the building and construction industry, exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including Respondent. Annually, the employer-members of the association collectively provide and perform building and construction services valued in excess of $50,000, of which building and construction services valued in excess of $50,000 were provided and performed within the States of the United States other than the State of New Jersey wherein BCA is located, and have received construction materials at their respective jobsites located in New Jersey, which materials were valued in excess of $50,000, and which materials were shipped to said jobsites directly from outside the State of New Jersey. Respondent admits, and I find, that BCA is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. THE LABOR ORGANIZATION

Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *Background*

For many years BCA has negotiated collective-bargaining agreements with Respondent covering laborers employed by BCA's employer-members. At all times material herein, and pursuant to the collective-bargaining agreement between Respondent and BCA, Respondent has maintained and operated on behalf of employer-members of BCA an exclusive job-referral system whereby all laborers to be employed by BCA's employer-members at construction sites located in and about Elizabeth, New Jersey, must be referred to them by Respondent. Since September 1977 Respondent has maintained a comprehensive hiring-hall plan to insure that job referrals are made in a nondiscriminatory fashion. (See G.C. Exh. 2.)[2]

No evidence was adduced at the hearing that prior to March 5, 1982, Respondent was not in compliance with the Board Order requiring it to operate the hiring hall in a nondiscriminatory manner.

The undisputed evidence revealed that Respondent occupies a building located at 647 Marshall Street, Elizabeth, New Jersey, a two-story brick building containing the union hiring hall and offices on the second floor. The first floor is occupied by a business having no connection with Respondent. The hiring hall has several windows overlooking Marshall Street, as well as two offices. The first is occupied by John Riggi, business manager of Respondent, and the second office is occupied by John Corsentino, secretary of Respondent, both of whom are admittedly agents of Respondent.

The Charging Party testified that, prior to March 1982, the procedure for an individual seeking a job referral from the hiring hall was as follows: The applicant would enter the hall, approach a desk inside Corsentino's office, and inform whoever was sitting at the desk that he was seeking a job referral. The applicant would then sign a daily sign-in sheet, a roster sheet, a supplementary sheet to record the applicant's work experience, and an assessment form.[3]

After applicants signed the various sheets, some would proceed into Riggi's office while others sat on the bench in the hall waiting for referrals. As jobs became available, Corsentino called names of applicants for available positions. Those responding would receive referral slips, and would then proceed to the job in question.

#### B. *The Business Meeting of March 5, 1982*

Respondent held a monthly business meeting on March 5, 1982. According to the Charging Party, at this meeting after Riggi informed the members that work was "slow," member Charles Stango Sr. charged that nonbookmen were obtaining a majority of work, while bookmen were not getting their fair share of work.[4] Thereafter, member Resbeth "Nick" Farmer, herein Farmer, in agreeing with Stango that nonbookmen were obtaining a majority of work, stated that they should be kept out of the hall, and offered a motion that bookmen not be allowed to remain on the premises after registering for employment. The motion was carried with no opposition. The Charging Party stated that he abstained from voting. Thereafter, Riggi stated that he would comply with the will of the membership, but predicted that as soon as he did certain people at the meeting would file charges with the National Labor Relations Board.[5]

Farmer testified on behalf of Respondent. He stated that he became very concerned with respect to the condition of the union hall. He further stated that he observed the hall and restroom were filthy, marijuana was flushed in the toilet, and wine bottles were "all over the place." He described the hall as being a "dump" and a "slum." Approximately a week prior to the union meet-

[2] This plan was established subsequent to the issuance of a complaint which alleged that Respondent violated Sec. 8(b)(1)(A) and (2) by, inter alia, maintaining and operating its exclusive job-referral system in a discriminatory manner. In 1980 the Board found Respondent to have been in violation of the Act prior to the establishment of its hiring-hall plan in 1977. *Laborers' Local 394 (Building Contractors)*, 247 NLRB 97 (1980).

[3] Conflicting testimony was adduced at the hearing as to whether or nor the assessment constituted dues involuntarily obtained from nonmember job applicants. As this matter has no bearing on the issues in the instant case, and as no allegation was made that the assessment violated the Act, I find it unnecessary to resolve this issue.

[4] Bookmen are members who pay dues on a regular basis. Nonbookmen encompass nonmembers and union members who are delinquent in dues payments in excess of 3 months.

[5] He was correct in his prediction.

ing of March 5, he spoke to Riggi about the conditions found in the hiring hall. According to Farmer, Riggi was not impressed with his complaints, and took no action to rectify the condition in the hall.[6]

Farmer asserted that, when he was recognized at the March 5 meeting, he stated to the president of the Local, "For 27 years while I was in that local we worked hard to buy this building and this is our building, and that I don't see why every nonbookmember can come up here and destroy our building, its condition, for the last year, I say, it's filth. And I said, what are we going to do about it?"[7] Thereafter, Farmer offered a motion that all nonbookmen not be allowed in the hall as long as they conducted themselves "that way." He further suggested that the executive board and the business manager have authority to keep the nonbookmen out of Respondent's hallway. Farmer denied having engaged in any discussion concerning the subject matter of nonmembers taking business from members.

Two other members of Respondent also testified at the hearing. Charles Sottes and Michael Berzito, both of whom were present at the March 5 meeting, supported Farmer's assertion that nonmembers were responsible for causing filthy conditions at the hall. Berzito further charged that nonmembers misbehaved by smoking "funny cigarettes" and drinking in excess. Berzito further testified that these conditions had been present for approximately 4 or 5 years.

None of Respondent's witnesses furnished names of any nonmembers whom they charged with misbehavior on Respondent's premises.

The minutes of the March 5 union meeting were received into evidence. None of the parties disputed the accuracy of the minutes.

Under the heading, "Business Manager's Report," the following is stated:

> John Riggi reported that work is very slow. No new work starting except Kelvan & McGee at Schering. Exxon is very slow.

Later, under "New Business," the following is recorded:

> Charles Stango asked for the floor that the Man off the Street has more rights to our union then the Book Man. I have to pay dues for members of Long Standing because they can't work. I will never again work next to a Non Book Member. Nick Farmer took the floor and said that the Business Manager and Executive Board Should do Something about the Non Book Members who are making a dump out of our Local Union Hall. Nick Farmer made a motion to give the power to the Business Manager & Executive Board to Solve the Problem of putting Non Bookmen outside & Bookmen inside our building. Seconded by Anthony DeMaio. All were in favor. John Riggi said he will do whatever the Membership wants. We are going to Start to respect ourselves more.

Under the heading, "Good Welfare," the following was noted:

> Nick Farmer made a motion that Book Men sign up inside the Building & Non Book Men sign up outside. Seconded by Charles Scotto. All were in favor.

Implementation of the Motion of March 5

According to the Charging Party, the motion made by Farmer was implemented the following Monday, March 8. He observed that a desk was set up in the hallway downstairs at the doorway to the building. Nonbookmen, after conducting their business at the desk, were not permitted to enter the union hall, but were required to remain outside on the street. After approximately 3 or 4 weeks, the desk was placed at the top of the stairs at the entrance to the hiring hall. The Charging Party further asserted that thereafter, and continuing to date, nonbookmen walk upstairs, conduct their business at the desk, and return to the street. When it was necessary to inform nonbookmen of job referrals, Corsentino called out the window from the second floor the name of the individual he was seeking.

According to the Charging Party, the nonbookmen were compelled to remain outside the hiring hall, both in fair weather or foul. In addition, none of the nonbookmen were permitted to utilize the restrooms in the hiring hall. (The Charging Party testified that restrooms were available approximately two blocks from the hiring hall.)

John Corsentino, secretary-treasurer and office manager of Respondent, was the sole agent of Respondent called to testify.

On direct examination, Corsentino stated that, following the March 5 meeting, Respondent implemented the new exclusionary policy voted on by the membership. Both bookmen and nonbookmen signed the roster sheet, the daily sign-in sheet, etc., at the same location. Thereafter, the nonbookmen were obliged to leave the union hall and wait in the street until called for a job referral. However, in winter, they were permitted to stay in the hall. He further testified that to the best of his knowledge (no records were maintained) there was no drastic change in attendance of nonmembers[8] at the union hall in March, April, or May 1982.

Corsentino further testified that in the past 5 years conditions at the union hall with respect to cleanliness had deteriorated. He attributed this condition to the influx of nonmembers seeking higher paying jobs through the union hiring-hall system. He agreed with the membership's decision to exclude nonmembers[9] from the hiring hall.

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[6] In Farmer's opinion, based on observations made by him, the condition in the hall was caused by nonmembers.

[7] The president of the Local is Joe LaSalle. The record does not reflect his response.

[8] By "attendance of nonmembers," I conclude that he meant registration of nonbookmen, as it is undisputed that nonbookmen were excluded from the use of the hiring hall following registration after March 5.

[9] Although the term "nonmember" was used throughout the hearing with reference to the exclusionary policy, as the minutes of the March 5 meeting indicates, I have concluded that the exclusion encompassed both

*Continued*

On cross-examination, Corsentino conceded that, on receiving complaints from members about unruly behavior of nonmembers, he took no action against individuals about whom the complaints were made. His justification for this failure to act was that he had no authority to discipline anyone without consent of the union membership as a whole. Corsentino could not furnish names of any specific nonmembers who allegedly were creating problems at the union hall over a 5-year period.

Corsentino also acknowledged that, prior to 1982, there was substantially more work available for laborers.

## Discussion and Analysis

The General Counsel contends that, prior to March 1982, nonmembers enjoyed the same privileges as union members respecting admission to the union hall. Thereafter, all nonmembers were excluded from the use of the union hall solely on the basis of their lack of union membership.

The effect of this action of the Union discourages nonmembers from using the hiring hall and bars them from effectively monitoring the Union's referral system. Such conduct discriminates against nonmembers and serves the specific purpose of reserving work for union members.

Respondent denies having violated the Act in any manner. It contends that it has the authority to exclude nonmembers from its hiring hall, especially when nonmembers engage in "an obstructive harassing type of conduct," and that said exclusion does not deprive the nonmembers of their rights guaranteed in Section 7 of the Act.

The main thrust of Respondent's argument is that the nonmembers were barred from the hiring hall because, as a group, they conducted themselves "in an obstructive and harassing type of manner."

The credible facts do not warrant this conclusion. In my opinion, insufficient evidence was adduced at the hearing to convince me that nonmembers acted in any manner which justified their explusion and denial of use of the hiring hall. The evidence revealed the following:

1. Respondent's witnesses averred that, for a period of approximately 5 years, nonmembers allegedly were abusing the hiring hall facilities. Yet, despite this alleged misbehavior by nonmembers, no corrective action was taken until March 5, 1982.

2. Despite constant interrogation by the General Counsel, not one specific individual, whether member or not, was identified by name or description as an abuser of the hiring hall.

3. Although allegedly complaints of misbehavior by nonmembers were reported to Respondent's office manager, no action was taken by any of Respondent's officers to expel the offenders or bar them from the premises.

I do not accept Corsentino's testimony that he had no authority to institute corrective action unless and until the full union membership authorized him to do so. Union officials are elected or appointed to specific functions. Surely, someone must have authority, whether Corsentino or another official, to maintain order in Respondent's hiring hall.

4. Not until Riggi stated at the March 5 meeting that work was slow,—and I take official notice that 1982 was a recession year—and not until member Charles Stango complained about nonbookmen having greater rights in the Union than members and declared that he would no longer work with nonbookmen,[10] was a motion made to exclude nonmembers from the use of the hiring hall, allegedly because of their misbehavior in the hall.

Based on the above set of facts, I do not credit Respondent's witnesses that the motion to expel nonmembers resulted from the misbehavior of said nonmembers. I am in accord with the General Counsel that Respondent's asserted motive for adopting the rule was pretextual. I further conclude that the true motive behind the motion stemmed from the frustrations of union members who, because of the recent recession, were unable to obtain as much work as they desired. In response to these conditions, they took whatever steps they could within what they believed were the limits of the law, to avoid sharing work within nonmembers whom they considered "freeloaders." As Respondent was operating an exclusive hiring hall, it could not legally deprive nonmembers of their Section 7 rights by denying to them the right to register for employment. It did the next best thing. It deprived them of the right to physically remain in the hall while awaiting job referrals.

The issue thus presented is whether Respondent, by denying nonmembers the physical use of its hiring hall while they awaited job referrals after signing the daily sign-in sheet, restrained and coerced them fron exercising the rights guaranteed by Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

The principle that a labor organization which represents employees in an appropriate bargaining unit is bound by law to fairly represent all the employees in the unit was first enunciated by the Supreme Court in *Wallace Corp. v. NLRB*, 323 U.S. 248 (1944). There, at 255–256, the Court stated:

> The duties of a bargaining agent selected under the terms of the Act extend beyond the mere representation of the interests of its own group members. By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interest fairly and impartially.

In 1962, the Board, in applying the doctrine of the duty of fair representation, stated in *Miranda Fuel Co.*, 140 NLRB 181, 185 (1962), the following:

> . . . we conclude that Section 8(b)(1)(A) of the Act accordingly prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair. [Fn. omitted.]

nonmembers and members delinquent in dues, collectively called nonbookmen.

[10] See minutes of the meeting (R. Exh. 1).

Following the *Miranda* decision, the Board has decided numerous cases involving the doctrine of duty of fair representation. The majority of said cases applied the doctrine in grievance and arbitration proceedings, e.g., *Machinists Local 697 (H.O. Canfield Rubber Co.)*, 223 NLRB 832 (1976), and *Boilermakers Local 72 (Combustion Engineering)*, 260 NLRB 232 (1982).

However, there have been a number of cases involving a labor organization's misuse of its hiring hall *which had the effect of discriminating against nonmembers* in regard to hire or tenure of employment or term or conditions of employment. See, e.g., *Operating Engineers Local 825 (H. John Homan Co.)*, 137 NLRB 1043 (1962).

Both the General Counsel and Respondent are in accord with the following legal precepts:

1. The Supreme Court's ruling that the only encouragement or discouragement of union membership prohibited by the Act is that which is accomplished by discrimination. *Teamsters Local 357 v. NLRB*, 365 U.S. 667, 676 (1961).

2. Section 8(b)(1)(A) of the Act assures a union freedom where its legitimate internal affairs are concerned. *NLRB v. Shipbuilders (U.S. Lines Co.)*, 391 U.S. 418, 424 (1968).

In the instant case, the sole discriminatory conduct of Respondent consisted of its refusal to permit nonmembers the physical use of its hiring hall.

The General Counsel argues that this act of Respondent not only leaves the nonmembers out in the cold but, further, precludes them from checking the daily referral list to ascertain that referrals are made in a proper manner.

I find no merit in the General Counsel's contention for the following reasons:

1. No evidence was adduced that nonmembers have been denied access to checking the referral list. Not one nonmember complained that the system established by Respondent was not fairly implemented.

2. The Charging Party, a member of Respondent, had free access to the hiring hall. No evidence was adduced through him that any impropriety existed subsequent to the establishment of the exclusionary rule by Respondent with respect to the referral system.

3. The General Counsel, after having obtained union records subpoenaed by her, was unable to demonstrate that, subsequent to March 5, a marked dropoff of registration of nonbookmen took place.

The Board has held that "the nonunion applicant for employment, who utilized the hiring hall, is clearly *not an employee in the unit* which is represented by the Union and is therefore not entitled as a matter of right to the *unconditional provision of services* that the Union must make available to all unit employees without imposition of special fees on those who are not among its members." (Emphasis added.) *Machinists Local 697 (H.O. Canfield Rubber Co.)*, 223 NLRB 832, 835 fn. 4 (1976).

I have interpreted this statement to signify that nonmember job applicants do not enjoy equal rights and benefits as nonunion employees covered by a collective-bargaining agreement.

The record established that Respondent and its members own the hiring hall. As long as nonbookmen are permitted to register for employment, sign in the sign-in sheets, and are referred to work on a nondiscriminatory basis, Respondent owes them no further duty. If Respondent desires that the hiring hall be used for the comfort and enjoyment solely for its members in good standing, it should be permitted to do so. This action is permissible as it concerns Respondent's legitimate internal affairs, and does not, with no evidence to the contrary, per se, interfere with job opportunities of nonbookmen.

It is evident that the exclusionary rule of Respondent encourages nonmembers to join the Union and encourages members who are delinquent in their payment of dues to remedy that condition. However, I do not conclude that this encouragement of union membership is accomplished by discrimination. Thus, the second part of the Supreme Court's precept established in *Teamsters Local 357*, supra, is not present in the instant case.

Accordingly, I find that Respondent is not operating an exclusive hiring hall in a discriminatory manner in violation of Section 8(b)(1)(A) of the Act, as alleged by the General Counsel, and I recommend that the complaint be dismissed.

## CONCLUSIONS OF LAW

1. Building Contractors Association of New Jersey is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent, Local 394, Laborers' International Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The General Counsel has failed to prove that Respondent violated Section 8(b)(1)(A) of the Act, as alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]